

**SUPREME COURT STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

**THE BANK OF NEW YORK AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS CWALT, INC. ALTERNATIVE  
LOAN TRUST 2006-OC8, MORTGAGE PASS-THROUGH  
CERTIFICATES, SERIES 2006-OC8**

Plaintiff,

vs.

**DOMINGO HERNANDEZ A/K/A DOMINGO A.  
HERNANDEZ, MORTGAGE ELECTRONIC  
REGISTRATION SYSYEMS, INC., AS NOMINESS FOR  
COUNTRYWIDE BANK, N.A., BANK OF AMERICA,  
N.A., THE PEOPLE OF THE STATE OF NEW YORK  
and "John Doe #1 through John Doe #10", inclusive  
the last ten names being fictitious and unknown to  
plaintiff, the persons or parties intended being the  
persons, tenant, occupants, or corporations, if any,  
having or claiming an interest in or lien upon the  
mortgaged premises described in the complaint,**

Defendant(s).

Index No.: 03295-09

**AMENDED ANSWER AND  
COUNTERCLAIMS**

**RECEIVED**  
**APR 17 2009**  
**CHIEF CLERK**  
**WESTCHESTER SUPREME**  
**AND COUNTY COURTS**

Christopher R. Cabanillas, an attorney duly admitted to practice law in the Courts of the State of New York hereby affirm the following to be true pursuant to CPLR § 2106:

1. I am the attorney of record for the defendant, **DOMINGO Hernandez** (hereinafter the "Defendant") in the above-captioned action, and as such am fully familiar with the facts and circumstances involved herein. The basis of my knowledge is verbal information and documents provided by Defendants.

2. I submit this Amended Answer as of right pursuant to CPLR 3025 (a) on behalf of the Defendant to amend and clarify the original Answer and Counterclaims.

3. On April 6, 2009, the Defendant served the Plaintiff with a Notice of Appearance, Verified Answer, Set-Offs and Counterclaims.

4. On or about April 16, 2009, we received Plaintiff's reply to the Answer alleging the following:

- a. That Mortgage Reform and Anti-Predatory Lending Act of 2007 has not yet been enacted into legislature; and
- b. That Defendant did not properly state a cause of action for Plaintiff's negligence.

5. We respectfully refer the Plaintiff to the following amendments.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

**AND FIRST COUNTERCLAIM; PREDATORY LENDING**

6. In reference to ¶ 17 of the original Answer (herein known as the "Answer"), the Defendant recants and strikes from the record its allegation that the Plaintiff violated the Mortgage Reform and Anti-Predatory Lending Act of 2007 which is, in fact, still a bill not yet been enacted into legislature.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE AND**

**SIXTH COUNTERCLAIM; NEGLIGENCE**

7. In reference to ¶¶ 38 and 39 of the Answer, that upon information and belief, **THE BANK OF NEW YORK** was negligent.

8. That upon information and belief, the Defendant was owed duties from **THE BANK OF NEW YORK** including, but not limited, to the following:

- a. A duty to warn of the downside and financial perils associated with subprime mortgage; and
- b. A duty to comply with Federal and State banking and consumer protection laws; and

- c. A common law duty and/or a duty imposed by statute, rule or regulation, to properly warn the Defendant and/or notify the Defendant of the potential increased payments and other financial hazards associated with a subprime mortgage; and
- d. A statutory duty to deliver the disclosure required under the Truth in Lending Act before the closing; and
- e. A common law duty of good faith and dealing; and
- f. A statutory duty of good faith and dealing as mandated under the Deceptive Practices Act (NY Gen. Bus. 349); and
- g. A contractual duty to refinance the loan created under the theory of promissory estoppel when the Defendant reasonably relied to his detriment upon the promise made by **THE BANK OF NEW YORK**.

9. That upon information and belief, **THE BANK OF NEW YORK** breached said duties.

10. That but for the breach of the said duties by **THE BANK OF NEW YORK**, the Defendant would not be facing an unconscionably high interest rate that has resulted in this foreclosure action taken against him.

11. That the breach of the said duties by **THE BANK OF NEW YORK** is the proximate cause for the unconscionably high interest rate and the foreclosure action the Defendant now faces.

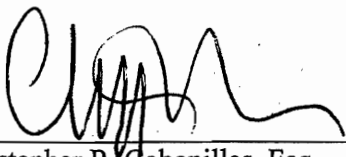
12. That the Defendant is entitled to any and all actual or statutory damages resulting from the breach of said duties by Plaintiff **THE BANK OF NEW YORK** subject to the Court's determination.

WHEREFORE, the Defendant demands judgment against the Plaintiff dismissing the complaint herein; rescission of the subject mortgage and loan; and a return of all of the Defendants' payments made pursuant to such fraudulently induced mortgage/note, including statutory interest thereupon; and a judgment in the amount to be determined at trial as and for each of Defendants' Set-Offs and Counterclaims, and reasonable attorney's fees; and for such other, further and additional relief as this Court may seem just and equitable, including punitive damages for the fraudulent deeds of the Plaintiff; together with the costs and disbursements of this action.

Dated: White Plains, NY

April 17, 2009

To: Jason E. Brooks, Esq.  
McCabe, Weisberg & Conway, P.C.  
Attorneys for Plaintiff  
145 Huguenot Street, Suite 310  
New Rochelle, NY 10801  
(914) 636-8900

X   
\_\_\_\_\_  
Christopher R. Cabanillas, Esq.  
(Rule 130-1.1)  
Attorney for Defendant Domingo Hernandez  
245 Main Street, Suite 120  
White Plains, NY 10601  
Tel.: (914) 220-8272  
Fax: (914) 220-8274 (Not for Service)

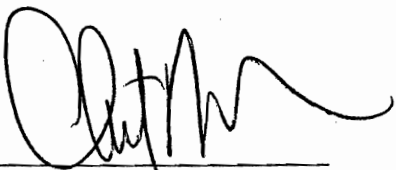
**VERIFICATION**

I, Christopher R. Cabanillas, being duly admitted to practice before the Courts of the State of New York, under penalties of perjury, do affirm as follows:

I am the attorney of record for the within Defendant. I have read the annexed **Amended Answer and Counterclaims** and know the contents thereof and the same are true to my knowledge, except those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. My belief, as to those matters therein not stated upon knowledge is based upon documents and files available to affirmant.

The reason I make this affirmation instead of the Defendant's is that the Defendant was <sup>not</sup> in the county that my office is located in when this Amended Answer and Counterclaims was sent out, to wit: Westchester County.

Dated: White Plains, New York  
April 17, 2009

  
\_\_\_\_\_  
Christopher R. Cabanillas, Esq.

**AFFIDAVIT OF SERVICE**

**SUPREME COURT STATE OF NEW YORK  
COUNTY OF WESTCHESTER**

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Index No.: 03295-09

**AFFIDAVIT OF SERVICE FOR THE  
AMENDED ANSWER AND  
COUNTERCLAIMS**

State of New York, County of Westchester: ss.:

I, Peter Ching, being first duly sworn, hereby depose and say: I am not a party to the action, am over 18 years of age, have not served more than five service of process this year, and maintain a place of business at 245 Main Street, Suite 120, White Plains NY 10601.

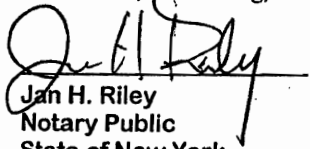
On April 17, 2009, I served the a true copy of the above referenced Amended Answer and Counterclaims by US Postal first class mail to each of the following persons at the addresses set forth below:

To: Jason E. Brooks, Esq.  
McCabe, Weisberg & Conway, P.C.  
Attorney for Plaintiff  
145 Huguenot Street, Suite 310  
New Rochelle, NY 10801  
Phone: (914) 636-8900  
Fax: (914) 636-8901



Peter Ching

On this 17<sup>th</sup> day of April 2009, before me personally came Peter Ching, to be known and known to me by satisfactory proof as the individual described in and who, being duly sworn, executed the foregoing document and acknowledged to me that s/he, Peter Ching, executed the same.



Jan H. Riley  
Notary Public  
State of New York  
NO. 02RI5019934  
Qualified in Sullivan County  
Comm. Expires 01 Nov. 2009